

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Wenge XIE et al.

Examiner: Raymond K. Covington

Serial No.: 10/669,645

Group Art Unit: 1625

Filed: September 25, 2003

Title: INDAZOLES, BENZOTHIAZOLES, AND BENZOISOTHIAZOLES, AND
PREPARATION AND USES THEREOF

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(b)

MAIL STOP ISSUE FEE

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In response to the Issue Notification received September 15, 2008, applicants hereby request reconsideration of the patent term adjustment determination. This request is being filed within two months from the date of receipt of the issue notification and before the issue date of the patent. Pursuant to 37 CFR §§1.705(b)(1) and 1.18(e), attached herewith is a check in the amount of \$200.

Statement of Facts

(a) Correct Patent Term Adjustment §§1.705(b)(2)(i)

The Notice of Allowance indicates that the Patent Term Adjustment for the instant application is a total of 665 days. The Issue Notification also indicates that the Patent Term Adjustment for the instant application is a total of 652 days. Applicants hereby submit that the correct Patent Term Adjustment for the instant application is 772 (665 days plus 107 days) because the patent will issue 107 days after June 15, 2008 (i.e., the date 4 months after the payment of the issue fee on February 15, 2008) and because applicants should not have been

assessed a delay of 120 days for the submission of a so-called "Information of Disclosure Statement" on January 23, 2008.

Applicants traverse the patent term adjustment delay of 120 days assessed against applicants for the PAIR entry: 1-23-2008 Information Disclosure Statement (IDS) filed. While the PAIR description for this document was listed as an Information Disclosure Statement, the paper was in fact entitled *Request for Complete Notice of Allowance* (a copy of the January 23, 2008 is document attached hereto). As indicated in the January 23, 2008, applicants were not submitting an Information Disclosure Statement, but instead were simply requesting that the Examiner provide applicants with a complete examiner-initialed copy of the Form PTO/SB/08A (attached to applicants' Information Disclosure Statement of June 9, 2006) that should have been issued by the Examiner with the Office Action of December 11, 2006.

In the forms attached to the Office Action of December 11, 2006, the Examiner incorrectly renumbered the pages of the Form PTO/SB/08A, i.e., pages 2-3 were renumbered as pages 1-2, respectively, and did not include an initially copy of page 1 of 3 of the Form PTO/SB/08A. The Patent Office has since agreed that such action by the Examiner was in error and on September 4, 2008 issued as Communication which an included an initialed copy of the page 1 of 3 of the Form PTO/SB/08A.

Thus, the failure to issue an initialed copy of the page 1 of 3 of the Form PTO/SB/08A was an error committed by the USPTO, and not an error committed by the applicants. Further, the document filed January 23, 2008 was not an Information Disclosure Statement, but was a paper requesting that the USPTO correct its error (which it eventually did).

(b) Relevant Dates §§1.705(b)(2)(ii)

The instant application was filed on September 25, 2003. The first Office Action (Restriction Requirement) was issued on August 21, 2006. Pursuant to §1.702 (a)(1) and §1.703(a)(1), this resulted in a delay by the USPTO of 601 days as set forth in the PAIR system.

In addition, on July 6, 2007 applicants filed a Response to Non-Final Office Action issued June 11, 2007. The next document issued by the USPTO was the Notice of Allowance was issued January 14, 2008. Pursuant to §1.702 (a)(2) and §1.703(a)(2), this resulted in a delay by the USPTO of 69 days as set forth in the PAIR system.

Further, on February 15, 2008 applicants paid the issue fee. The patent will issue more than four months after the payment of the issue fee, i.e., on September 30, 2008. Pursuant to §1.702 (a)(4) and §1.703(a)(6), this resulted in a delay by the USPTO of 107 days.

To date, there have been no further delays pursuant to §1.702 (a). To date, there have also been no further delays pursuant to §1.702 (b)- §1.702 (e). Thus, the total delay by the USPTO was 777 days (601+69+107).

Pursuant to §1.704, the above-mentioned 777 delay was reduced by 5 days for the filing of a Response after non-Final Action on March 16, 2007. The March 16, 2007 Response was filed in response to the Office Action issued December 11, 2007.

Additionally, as discussed above, the above-mentioned 5 day delay was improperly further increased by 120 days for the filing of the so-called "Information Disclosure Statement" on January 23, 2008.

(c) Terminal Disclaimer §§1.705(b)(2)(iii)

The patent issuing from the instant application is not subject any terminal disclaimer.

(d) Circumstances constituting a failure to engage in reasonable efforts §§1.705(b)(2)(iv)

As noted above, in the Patent Term adjustment, the delay assessed against the PTO was 125 days. Applicants were assessed a delay of 5 days for the filing of a Response after non-Final Action on March 16, 2007, and a delay of 120 days for the submission of the so-called "Information Disclosure Statement" for the paper filed January 23, 2008.

Applicants respectfully submit that the submission of January 23, 2008, was not a circumstance constituting a failure to engage in reasonable efforts to conclude processing or examination. As of the issue of the Notice of Allowance, there were only two remaining outstanding requirements that needed to be satisfied. One requirement was for the applicants to pay the issue fee. The other requirement was for the USPTO to correctly issue a complete initialed copy of the Form PTO/SB/08A presented with applicants' Information Disclosure Statement of June 9, 2006.

By payment of the issue fee on February 15, 2008, applicants satisfied all their outstanding requirements (see §1.703(a)(6)). The only remaining outstanding requirement was a

requirement imposed on the USPTO, not the applicants. The facts show that the USPTO should have issued a complete initialed copy of the Form PTO/SB/08A (presented with applicants' Information Disclosure Statement of June 9, 2006) with the Office Action of December 11, 2006. There were no errors in the applicants' Information Disclosure Statement of June 9, 2006, and thus there was no reason why the USPTO should have renumbered the 2 of the 3 pages of the Form PTO/SB/08A and only issue these two renumbered pages with the Office Action of December 11, 2006. The fact that this was a USPTO error is implicitly acknowledged by the USPTO in the Communication of September 4, 2008 which included an initialed copy of the page 1 of 3 of the Form PTO/SB/08A.

Applicants should not be assessed a delay for courteously aiding the Examiner in completing the USPTO's requirements for examination. The delay in issuing the patent, after payment of the issue fee, was the direct result of an error by the USPTO. Applicants should not be assessed a delay as a direct result of a USPTO error.

Conclusion

For the reasons stated above, applicants respectfully request that the Patent Term Adjustment for the instant application be increased from 652 days to 777 days.

Respectfully submitted,

/Brion P. Heaney

Brion P. Heaney Reg. No. 32,542
Attorney/Agent for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410
Attorney Docket No.: MEMORY-33
Date: September 30, 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: : ATTN: PATENT PUBLICATIONS
Wenge XIE et al. : Examiner: Raymond K. Covington
Serial No.: 10/669,645 : Group Art Unit: 1625
Filed: September 25, 2003 : Allowed: January 14, 2008
For: INDAZOLES, BENZOTHAZOLES, AND BENZOISOTHAZOLES, AND PREPARATION AND USES
THEREOF

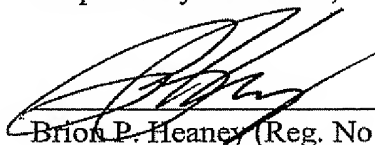
REQUEST FOR COMPLETE NOTICE OF ALLOWANCE

MAIL STOP ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Sir:

Attached is a copy of Applicants' 3-page Form PTO/SB/08A filed with the Information Disclosure Statement of June 16, 2004, as downloaded from the USPTO P.A.I.R. system. Also attached is a copy of this form as returned by the examiner with the Office Action of December 11, 2006, wherein it appears that the pages have been renumbered, and only two of the pages were returned with the examiner's initials indicating the references cited therein were considered during the prosecution of the above-identified application. It is respectfully requested that a fully examiner-initialed copy of Form PTO/SB/08A, including original Page 1 of 3 be returned to applicants.

Respectfully submitted,



Brian P. Heaney (Reg. No. 32,542)
Attorney for Applicants
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
Arlington Courthouse Plaza I
2200 Clarendon Blvd., Suite 1400
Arlington, VA 22201
Direct Dial: (703) 812-5308
Fax: (703) 243-6410
Internet address: heaney@mwzb.com

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Filed: January 23, 2008
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Substitute for form 1449A/PTO

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(use as many sheets as necessary)

Sheet 1 of 3

Complete if Known

Application Number	10/669,645
Filing Date	September 25, 2003
First Named Inventor	Ashok Tehim
Group Art Unit	1614
Examiner Name	Unassigned
Attorney Docket Number	MEMORY-33

U.S. PATENT DOCUMENTS

Examiner Initials *	Cite No. ¹	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY
		Number	Kind Code ² (if known)		
		4,789,673		Donatsch et al.	12/6/1988
		4,798,829		King et al.	1/17/1989
		4,845,092		Sanger et al.	7/4/1989
		4,886,808		King	12/12/1989
		4,910,193		Buchheit	3/20/1990
		4,937,247		King	6/26/1990
		4,942,160		Sanger et al.	7/17/1990
		4,975,436		Tyers	12/4/1990
		4,985,424		van Wijngaarden et al.	1/15/1991
		5,034,398		King	7/23/1991
		5,063,231		Sanger et al.	11/5/1991
		5,098,909		Williams	3/24/1992
		5,192,770		Clark et al.	3/9/1993
		5,204,356		Tyers	4/20/1993
		5,272,154		Dixon et al.	12/21/1993
		5,273,972		Jagdmann et al.	12/28/1993
		5,543,426		Dixon et al.	8/6/1996
		5,446,050		Rosen	8/29/1995
		5,561,149		Azria et al.	10/1/1996
		5,641,802		Arcamone et al.	6/24/1997
		5,773,436		Muller et al.	6/30/1998
		5,985,866		Muller et al.	11/16/1999
		6,492,385		Myers et al.	12/10/2002
		6,500,840		Myers et al.	12/31/2002
		6,599,916		Myers et al.	7/29/2003
		6,624,173		Crooks et al.	9/23/2003
		US 2003/0073707		Walker et al.	4/17/2003
		US 2004/0002513		Mazurov et al.	1/1/2004

Examiner Signature

Date Considered

EXAMINER: Initial (if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Unique citation designation number. ² See attached Kinds of U.S. Patent Documents. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard 67.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard 67.16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

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**INFORMATION DISCLOSURE
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Sheet 2 of 3

Complete if Known

Application Number	10/669,645
Filing Date	September 25, 2003
First Named Inventor	Ashok Tehim
Group Art Unit	1614
Examiner Name	Unassigned
Attorney Docket Number	MEMORY-33

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ²
		Office ³	Number ⁴	Kind Code ⁵ (if known)				
		JP	2002-30084			1/29/2002		
		GB	2 125 398			3/7/1984		
		EP	0 200 444			11/5/1986		
		EP	0 498 466			8/12/1992		
		EP	1 235 826			9/4/2002		
		WO	92/12149			7/23/1992		
		WO	02/085901			10/31/2002		
		WO	02/100833			12/19/2002		
		WO	02/100858			12/19/2002		
		WO	02/17358			2/28/2002		
		WO	03/022856			3/20/2003		
		WO	03/042210			5/22/2003		
		WO	03/072578			9/4/2003		
		WO	03/078431			9/25/2003		
		WO	03/094830			11/20/2003		
		WO	03/101987			11/12/2003		
		GB	2 145 416			3/27/1985		
		FR	2 548 666			1/11/1985		
		EP	0 214 772			3/18/1987		
		EP	1 079 828			3/7/2001		
		WO	84/00166			1/19/1984		
		WO	85/01048			3/14/1985		

Examiner
Signature

Date Considered

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

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Sheet 2 of 3

Complete If Known

Application Number	10/669,645
Filing Date	September 25, 2003
First Named Inventor	Ashok Tehim
Group Art Unit	1614
Examiner Name	Unassigned
Attorney Docket Number	MEMORY-33

NON-PATENT LITERATURE DOCUMENTS			
Examiner Initials *	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
		S.M. Evans et al., "Probing the 5-HT ₃ Receptor Site Using Novel Indole-3-Glyoxylic Acid Derivatives", Med. Chem. Res. (1993), 3:386-406	
		D. Flammia, "Lobeline: Structure-Affinity Investigation of Nicotinic Acetylcholinergic Receptor Binding", J. Med. Chem. (1999), 42:3726-2731	
		R. Azuma et al. "Metabolism and Disposition of GTS-21, A Novel Drug for Alzheimer's Disease", Xenobiotica (1999), Vol. 29, No. 7, pgs. 747-762	
		K. E. Stevens. Et al., "Selective α ₇ -nicotinic agonists normalize inhibition of auditory response in DBA mice", Psychopharmacology (1998), 136:320-327	
		R. Azuma et al., "The effect of repeat administration of GTS-21 on mixed-function oxidase activities in rat", Elsevier Science Ireland Ltd., Toxicology Letters 110 (1999) pgs. 137-144	
		M. Decker, et al., "Neuronal Nicotinic Acetylcholine Receptors: Novel Targets for CNS Therapeutics", pgs. 1-14	
		M. W. Holladay et al., "Neuronal Nicotinic Acetylcholine Receptors as Targets for Drug Discovery", Journal of Medicinal Chemistry, Vol. 40, No. 26, (1997), pgs. 4169-4194.	

Examiner Signature		Date Considered	
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INFORMATION DISCLOSURE
STATEMENT BY APPLICANT

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Sheet

1

of

2

Complete if Known

Application Number

10/669,645

Filing Date

September 25, 2003

First Named Inventor

Ashok Tehim

Group Art Unit

1614 / 1125

Examiner Name

Unassigned

Attorney Docket Number

MEMORY-33

NON-PATENT LITERATURE DOCUMENTS

Examiner Initials *	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
to		S.M. Evans et al., "Probing the 5-HT ₃ Receptor Site Using Novel Indole-3-Glyoxylic Acid Derivatives", Med. Chem. Res. (1993), 3:386-408	
to		D. Flammia, "Lobeline: Structure-Affinity Investigation of Nicotinic Acetylcholinergic Receptor Binding", J. Med. Chem. (1999), 42:3726-2731	
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to		M. Decker, et al., "Neuronal Nicotinic Acetylcholine Receptors: Novel Targets for CNS Therapeutics", pgs. 1-14 (2000)	
to		M. W. Holladay et al., "Neuronal Nicotinic Acetylcholine Receptors as Targets for Drug Discovery", Journal of Medicinal Chemistry, Vol. 40, No. 26, (1997), pgs. 4169-4194.	

Examiner
Signature

Raymond Conington

Date Considered

11/8/06

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet

2

of

21

Complete if Known

Application Number	10/669,645
Filing Date	September 25, 2003
First Named Inventor	Ashok Tehim
Group Art Unit	1014 1625
Examiner Name	Unassigned <i>Courtesy</i>
Attorney Docket Number	MEMORY-33

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	Y*
		Office ²	Number ⁴	Kind Code ⁵ (if known)				
<i>10</i>		JP	2002-30084			1/29/2002		
<i>10</i>		GB	2 125 398			3/7/1984		
<i>10</i>		EP	0 200 444			11/5/1986		
<i>10</i>		EP	0 498 466			8/12/1992		
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<i>10</i>		WO	92/12149			7/23/1992		
<i>10</i>		WO	02/085901			10/31/2002		
<i>10</i>		WO	02/100833			12/19/2002		
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<i>10</i>		WO	03/094830			11/20/2003		
<i>10</i>		WO	03/101987			11/12/2003		
<i>10</i>		GB	2 145 416			3/27/1985		
<i>10</i>		FR	2 548 666			1/11/1985		
<i>10</i>		EP	0 214 772			3/18/1987		
<i>10</i>		EP	1 079 828			3/7/2001		
<i>10</i>		WO	84/00166			1/19/1984		
<i>10</i>		WO	85/01048			3/14/1985		

Examiner Signature	<i>Raymond Carter</i>	Date Considered	<i>11/8/06</i>
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 809. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

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